

REMARKS

This Amendment is in response to the Office Action mailed February 6, 2003. The Examiner is thanked for the examination and suggested claim language associated with claim 21. In the Office Action, claims 21-24 were rejected under 35 U.S.C. §§ 102(e) and 112 (second paragraph). Claims 1-20 were rejected under 35 U.S.C. § 103(a). Claim 21 has been amended. No new claims have been added. Claims 1-24 remain pending in the application. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

I. Nonstatutory Double Patenting Rejection

Pending claims 1-20 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 09/271,011. Applicants respectfully acknowledge this provisional obviousness-type double patenting rejection of the pending claims. However, Applicants ~~respectfully~~ decline to file a terminal disclaimer until either the subject application or the copending Application No. 09/271,011 has been allowed.

II. Rejections Under 35 U.S.C. §112, second paragraph

Claims 21-24 have been rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite. Applicants have revised claim 21 and respectfully request the §112 rejection be withdrawn.

III. REJECTION UNDER 35 U.S.C. §102(E)

Claims 21-24 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,192,028 to Simmons et al. (hereinafter referred to as Simmons). As the Examiner is aware, to anticipate a claim under 35 U.S.C. §102(e), Simmons must teach each and every

element of the claims. “A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference.” *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Herein, Simmons fails to describe “a receive buffer from which packets of data are promoted in an assigned order *based on pointer values with priority given to pointer values in the first pointer value buffer.*” (Emphasis added).

In contrast, Simmons describes a port vector FIFO (63) that receives a port vector (forwarding instruction for a data frame) and the corresponding frame pointer. *See column 8, lines 1-20 of Simmons*. The port vector is examined by the port vector FIFO (63) based on a first-in, first-out order so as to determine which particular output queue the frame pointer should be input. *See column 8, lines 23-26 of Simmons*. The frame pointer is placed in the determined output queue (67), and at some point in time, is used to fetch a corresponding data frame for placement in an appropriate transmit FIFO (66). *See column 8, lines 34-43 of Simmons*. This switching mechanism is performed in accordance with a first-in, first-out data packet promotion protocol, and thus, does not *promote packets* of data in an assigned order *based on pointer values with priority given to pointer values in the first pointer value buffer*. Simmons simply teaches the promotion of data frames based on *when* the pointer is loaded into the port vector FIFO. There is no suggestion of basing promotion on the the pointer values.

In light of the foregoing, Applicants respectfully request withdrawal of the §102(e) rejection and that independent claim 21 as well as dependent claims 22-24 are in condition for allowance.

IV. Rejections Under 35 U.S.C. §103(a)

Claims 1-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Simmons in view of Frazier et al. (U.S. Patent No. 5, 784, 559), hereinafter referred to as Frazier.

Applicants respectfully traverse the rejection.

To establish a prima facie case of obviousness, the combination of the prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination must be found in the prior art, not in applicant's disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Herein, neither Simmons nor Frazier, alone or in combination, discloses or even suggest assignment of a plurality of pointer values to a corresponding plurality of records in a pointer value buffer associated with each of the virtual links, the *assignment of the plurality of pointer values based, at least in part, on the relative order in which data frames are transmitted on each of the virtual links and each of the plurality of pointer values being used to determine an order in which the data frames corresponding to the plurality of pointer values are promoted from a receive buffer for transmission.*" (Emphasis added). As suggested by the Examiner, Simmons does explicitly discloses a free buffer pointer, also referred to as the "frame pointer," but the frame pointer is not used to determine an order in which the data frames are promoted. In particular, Applicants respectfully submit that neither Simmons nor Frazier suggest such operations by the frame pointer. These operations are set forth in independent claims 1, 10, 16 and 19.

Hence, independent claims 1, 10, 16 and 19 as well as claims dependent thereon are in condition for allowance. Withdrawal of the §103(a) rejection is respectfully requested.

CONCLUSION

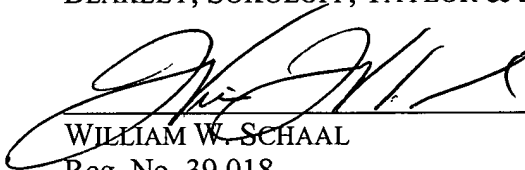
In view of the amendments and remarks made above, it is respectfully submitted that the pending claims are in condition for allowance, and such action is respectfully solicited.

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicants hereby request such an extension.

Respectfully submitted,

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Dated: May 6, 2003




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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on: May 6, 2003.



Corinn R. Reynolds

5/6/03
Date